

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION
Rules I through IX pertaining to	)	
awarding grants to carry out the	)	
purposes of the Montana Community	)	
Health Center Support Act	)	

TO: All Interested Persons

1. On December 6, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-423 pertaining to the public hearing on the proposed adoption of the above-stated rules, at page 1990 of the 2007 Montana Administrative Register, issue number 23.

2. The department has adopted New Rule I (ARM 37.109.101), and Rule VII (ARM 37.109.113) as proposed.

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE II (37.109.103) DEFINITIONS (1) "Advisory group" means the nine member group appointed as provided in 50-4-810, MCA, ~~that recommends to the department the protocols and priorities among goals it considers appropriate for funding.~~

(2) remains as proposed.

(3) "Bureau of Primary Health Care (BPHC)" means the bureau within the Health Resources and Services Administration (HRSA) of the federal United States Department of Health and Human Services that oversees the determination of Community Health Center (CHC) status and makes a recommendation regarding federally qualified health center (FQHC) and FQHC look-alike status. A health care center that wants Section 330 grant money ~~of~~ from the PHSA must apply to the BPHC as provided in 42 CFR 51c (2007), ~~et seq.~~

(4) remains as proposed.

(5) "Centers for Medicare and Medicaid Services (CMS)" is the division of the federal United States Department of Health and Human Services that confers FQHC and FQHC look-alike status and implements FQHC reimbursement policy.

(6) "Community health center (CHC)" means a health care center that meets the requirements of 42 USC 254b (2007) and 42 CFR 51c (2007), ~~et seq.~~ and is receiving federal Section 330 grant money under the PHSA.

(7) "Comprehensive primary health care services" means ~~the basic, entry-level health care that is generally provided in an outpatient setting, at a minimum providing or arranging for the provision of all of the following:~~

~~(a) diagnosis, treatment, consultation, referral, and other services rendered~~

by a licensed physician or other qualified personnel;

~~(b) diagnostic laboratory and radiological services;~~

~~(c) preventive health services, including medical social services, nutritional assessment, and referral, preventive health education, children's eye and ear examinations, well child care (including periodic screening), prenatal and postpartum care, cancer screening, immunization, and voluntary family planning service;~~

~~(d) emergency medical services;~~

~~(e) transportation services as needed for adequate patient care;~~

~~(f) dental services provided by a licensed dentist or other qualified personnel;~~

~~(g) mental health and substance abuse services;~~

~~(h) vision services;~~

~~(i) pharmaceutical services;~~

~~(j) therapeutic radiological services;~~

~~(k) public health services (including nutrition education and social services);~~

~~(l) ambulatory surgical services; and~~

~~(m) services, including the services of outreach workers (including those fluent in languages other than English), which promote and facilitate the optimal use of health services (42 CFR 51c102(h) and 51c102(j)).~~

(a) basic health services which, for the purposes of this subchapter, shall consist of:

(i) health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians and where appropriate, physician assistants, nurse practitioners, and nurse midwives;

(ii) diagnostic laboratory and radiologic services;

(iii) preventive health services, including:

(A) prenatal and perinatal services;

(B) appropriate cancer screening;

(C) well-child services;

(D) immunizations against vaccine-preventable diseases;

(E) screenings for elevated blood lead levels, communicable diseases, and cholesterol;

(F) pediatric eye, ear, and dental screenings to determine the need for vision and hearing correction and dental care;

(G) voluntary family planning services;

(H) preventive dental services;

(iv) emergency medical services; and

(v) pharmaceutical services as may be appropriate for particular centers;

(b) referrals to providers of medical services (including specialty referral when medically indicated) and other health-related services (including substance abuse and mental health services);

(c) patient case management services (including counseling, referral, and follow-up services) and other services designed to assist health center patients in establishing eligibility for and gaining access to federal, state, and local programs that provide or financially support the provision of medical, social, housing, educational, or other related services;

(d) services that enable individuals to use the services of the health center (including outreach and transportation services and, if a substantial number of the

individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals); and

(e) education of patients and the general population served by the health center regarding the availability and proper use of health services.

(8) remains as proposed.

(9) "Department committee" means employees of the department and other persons appointed by the department director to participate in the screening and grant awards determination in this rule.

(10) remains as proposed.

(11) "Federally qualified health center" means a facility that meets the definition of 42 USC 1396d(l)(2)(B) (2007). A FQHC is entitled to receive enhanced Medicaid and Medicare reimbursement. Federally qualified Ccommunity health centers, federally qualified health center look-alikes, and certain tribal and urban Indian entities are FQHCs. Federally qualified health centers are also referred to as federally Qualified community health centers in Montana statute.

(12) remains as proposed.

(13) "Medically underserved area or population (MUA/MUP)" means an area or population designated by the Secretary of the United States Department of Health and Human Services as having a shortage of primary health services. Designation information may be obtained from the primary care office within the ~~department~~ United States Department of Health and Human Services.

(14) through (18) remain as proposed.

AUTH: 50-4-804, MCA

IMP: 50-4-801, MCA

### RULE III (37.109.105) ~~PROTOCOLS AND PRIORITIES AMONG GOALS~~

(1) The advisory group appointed pursuant to 50-4-810, MCA, shall advise the department committee, in writing, of its recommendations for the ~~protocols and priorities~~ related to awarding state grant(s) from among the following goals:

(a) remains as proposed.

(b) create and support new access satellites in new locations for comprehensive primary health care services by existing CHCs ~~in new locations;~~

(c) through (e) remain as proposed.

(2) Final decision ~~of the protocols and priorities~~ will be made by the department committee. If the department committee does not follow the recommendations of the advisory group, ~~it must comply with the requirements of 50-4-811, MCA~~ it will provide its reasons for not doing so in writing to the advisory group.

AUTH: 50-4-804, MCA

IMP: 50-4-805, MCA

RULE IV (37.109.107) ELIGIBILITY FOR GRANT (1) To be eligible for consideration for a state grant an applicant must submit a proposal and meet the requirements listed in (1)(a) through (f) and (2). The applicant for:

(a) "capital expenditure" must be to an existing FQHC. Capital expenditure grants are for the purchase of equipment or renovation of clinic facilities. Capital expenditure applications must demonstrate that additional services will be made available and/or increase patient capacity per department guidelines for capital expenditure applications;

(b) through (f) remain as proposed.

(2) The applicant for new access points ~~and new satellite access sites~~ must be able to meet all the requirements of 42 CFR 51c (2007), ~~et seq.~~ and provide evidence that the following requirements of 42 CFR 51c (2007) will be met:

(a) The successful applicant ~~will~~ must have a governing board with at least nine but not more than 25 members, a majority of whom are individuals served or who will be served by the health center and are representative of the health center's patient demographics. No more than one-half of the remaining members of the governing board may be individuals who derive more than ten percent of their annual income from the health care industry. The remaining members of the governing board shall be representative of the area which the center serves.

(b) The successful applicant ~~will~~ must have a sliding schedule of fees that is linked to the patient's ability to pay for patients with incomes up to 200% of the federal poverty level.

(c) The successful applicant ~~will be serving~~ must serve a significant portion of a population located in a medically underserved area (MUA) or designated as a medically underserved population (MUP). If the area is not currently federally designated, in whole or in part, as a MUA or MUP, the applicant must provide documentation that the request has been submitted.

(d) The successful applicant ~~will serve all patients~~ must provide access to services in the targeted service area or population without discrimination.

(3) The applicant for new satellite access sites, service expansion, expanded medical capacity, or capital expenditure must meet the requirements of 42 CFR 51c (2007), ~~et seq.~~ and provide evidence that the following requirements of 42 CFR 51c (2007) have been met:

(a) The successful applicant must have, or intend to have, a governing board with at least nine but not more than 25 members, a majority of whom are individuals served, or will be served, by the health center and are representative of the health center's patient demographics. No more than one-half of the remaining members of the governing board may be individuals who derive more than ten percent of their annual income from the health care industry. The remaining members of the governing board shall be representative of the area which the center serves.

(b) The successful applicant must have a sliding schedule of fees that is linked to the patient's ability to pay for patients with incomes up to 200% of the federal poverty level.

(c) The successful applicant ~~must be serving~~ serve a significant portion of a population located in a medically underserved area (MUA) or designated as a medically underserved population (MUP).

(d) The successful applicant ~~must serve all patients~~ provide access to services in the targeted services area or population without discrimination.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, MCA

RULE V (37.109.109) REQUESTS FOR PROPOSALS FOR MONTANA COMMUNITY HEALTH CENTER SUPPORT ACT GRANTS (1) and (2) remain as proposed.

(3) In addition ~~a new access point or new satellite~~ the RFP may require that the access application must include:

(a) through (c) remain as proposed.

(d) its expanded medical capacity application which it has submitted or will submit to the Secretary of HHS; ~~and~~ or

(e) its capital expenditure application which it will submit to the department.

(4) The applicant ~~should~~ may refer to the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006; or department guidelines for capital expenditure applications; whichever is most appropriate for additional information requirements.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, 50-4-806, MCA

RULE VI (37.109.111) CRITERIA FOR AWARDING GRANTS

(1) Proposals will be evaluated by the department committee using ~~criteria developed by the advisory group and the criteria~~ the priorities developed by the advisory group pursuant to ARM 37.109.105 and the criteria by category of application as located at the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006, or department guidelines for capital expenditure applications.

(2) ~~In addition to the criteria listed above, the~~ The advisory group may develop additional criteria related specifically to Montana and its unique circumstances. ~~Additional c~~Criteria to be considered may include, but is are not limited to: high need areas; i impact; i federal funding opportunities, readiness, collaborations, and cost per client served. ~~Any criterion used in addition to the criteria in the previous paragraph shall be listed in the request for proposal.~~

(3) ~~The advisory group may elect to develop weighting criteria related specifically to Montana and its unique circumstances. Weighting criteria does not have to conform to the weights assigned in the United States Department of Health and Human Services, HRSA-08-077 dated September 28, 2007; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2003-03 dated February 12, 2003; or the United States Department of Health and Human Services, Policy Information Notice (PIN) 2006-09 dated February 8, 2006; or department guidelines for capital expenditure applications. The advisory group will determine state-specific scoring methodology for the criteria identified above,~~

and also identify any preferences.

~~(4)~~ (3) All criteria shall be listed in the request for proposal. If the department committee does not follow the recommendations of the advisory group, it must comply with the requirements of 50-4-811, MCA.

(4) In the event that funding is available after the initial award process has been completed, the department shall have the option of making awards to the next highest rated applicant(s) without requiring a new RFP process.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, 50-4-806, MCA

#### RULE VIII (37.109.115) REVIEW OF PROPOSALS BY DEPARTMENT COMMITTEE

(1) remains as proposed.

(2) The advisory group will have an opportunity to define its role in the evaluation process in accordance with Montana Department of Administration requirements regarding requests for proposals.

AUTH: 50-4-804, MCA

IMP: 50-4-805, 50-4-806, MCA

#### RULE IX (37.109.117) AWARD AND ADMINISTRATION OF GRANT

(1) Final grant awards determination, along with a prioritized listing arranged by highest score of applicants will be made by the department committee. The department committee shall advise the advisory group, in writing, of its determination of grant award(s) to applicant(s) along with the prioritized listing of additional eligible applicants will be made by the department committee. The department committee shall advise the advisory group, in writing, of its determination of grant awards to applicant(s). If the department committee does not follow the recommendation(s) of the advisory group, it must comply with the requirements of 50-4-811, MCA the department committee will provide its reasons for not doing so in writing to the advisory committee.

(2) ~~Applicants~~ Successful applicants, also referred to as "grantees", that are to be awarded grants by the department will negotiate a contract with the department. Grant amounts will be awarded prior to the end of the state fiscal year.

(3) remains as proposed.

(4) The contract may be terminated for nonperformance or underperformance on the part of the applicant grantee. The department committee may make a determination of nonperformance or underperformance based on the applicants' grantee's demonstrated work toward accomplishing the objectives of their request for proposal. The applicant grantee will be notified by the department committee of ~~their~~ its determination of nonperformance or underperformance. The applicant grantee will be afforded an opportunity to remedy the nonperformance or underperformance. The department committee may make a determination of continuing nonperformance or underperformance based on the applicants' grantee's demonstrated work toward accomplishing the objectives of their request for proposal. The grantee applicant will have the right to ~~request a hearing~~ seek all

contractual and judicial remedies available if aggrieved by the determination of continuing nonperformance or underperformance of the department committee. ~~Hearing rights under this rule will be detailed in the department committee's determination of continuing nonperformance or underperformance.~~

(5) remains as proposed.

(6) Grant award monies will cease once federal monies are received by the successful applicant for the same purpose as this grant award.

(7) remains as proposed.

(8) Benchmarks and other reporting tools may be used by the department to determine a grantee's performance ~~on the part of applicants that obtain grant awards.~~

(9) remains as proposed.

AUTH: 50-4-804, MCA

IMP: 50-4-802, 50-4-805, 50-4-806, MCA

4. The department has changed references to the "federal Department of Health and Human Services" to the "United States Department of Health and Human Services" for uniformity and accuracy. This is not a substantive change. Department staff edited the following proposed rules to accurately state the rules' intent and to implement statute. Rule II(1) (ARM 37.109.103), Rule II(3) (ARM 37.109.103), Rule II(6) (ARM 37.109.103), Rule II(9) (ARM 37.109.103), Rule IV(2) (ARM 37.109.107), Rule IV(3) (ARM 37.109.107), and Rule VI(3) (ARM 37.109.111). These edits are not substantive changes. The edits make the adopted rules consistent with the revisions made to other proposed rules based on comments received and accepted. The cite to 42 CFR 51 was corrected to 42 CFR 51c and the phrase "successful applicant" was added where applicable to distinguish between requirements for applicants generally and requirements for applicants who were awarded state grants.

Rule IX (ARM 37.109.117) is corrected to accurately state that if the department determines a grantee is not performing or underperforming, it will have the right to seek all contractual and judicial remedies. Administrative hearings are not required for issues related to contract performance and an aggrieved grantee should not be required to exhaust unnecessary administrative remedies before proceeding to district court.

5. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Proposed Rule II(3) (ARM 37.109.103). The proposed definition of "Bureau of Primary Health Care" refers to "A health center that wants Section 330 grant money of the PHA...." This should refer to "A health center that wants Section 330 grant money from the PHSA...." "PHSA" is the acronym for Public Health Service Act defined in Rule II(2) (ARM 37.109.103).

RESPONSE: The department has investigated the matter and the errors noted by the commentor only appear in the copy of the notice as shown on the Department of Public Health and Human Services web site and may have also been reflected on the copy mailed to interested parties. The errors noted by the commentor are an internal clerical error after the notice had been submitted for publication. The language appears correctly in the official version published by the Secretary of State's office in the Montana Administrative Register and as published on their web site. As noted on the Department of Public Health and Human Services web site index page for the administrative rules (<http://www.dphhs.mt.gov/legalresources/administrativerules/index.shtml>), there is a possibility that the content on the web site may vary from the official version and that a copy of the official ARM in official format can be obtained from the Secretary of State's office. The department apologizes for the error and any confusion it may have caused. However, since the official version is correct, there is no need to make the changes suggested by the commentor.

COMMENT #2: Proposed Rule II(7) (ARM 37.109.103). The "Comprehensive primary health care services" definition should be consistent with the definition of required primary health care services in 42 USC 254b(b)(1) (2007). The list included in the proposed rule inadvertently included services that are considered "supplemental health services" and not required mandatory primary health care services. The new list language is from 42 USC 254b(b) (2007), which is the list of primary care services utilized in the current federal New Access Point Grant Guidance. The supplemental health services may be appropriate for particular centers to adequately support primary health services, but should not be required of all health centers.

RESPONSE: The department agrees and has changed the definition to reflect this.

COMMENT #3: The definition in proposed Rule II(11) (ARM 37.109.103). "Federally qualified health center" stated "Federally qualified health centers are also referred to as federally qualified community health centers in Montana statute." Federally qualified community health centers refer to community health centers but not the FQHC-lookalikes or tribal and urban Indian clinics which are other entities considered to be FQHCs.

RESPONSE: The department agrees. Montana statute defines the term "Federally qualified community health center" at 50-4-803(4), MCA. The reference to the term in Rule II(11) (ARM 37.109.103) is unnecessary and is deleted.

COMMENT #4: In proposed Rule III(1)(b), (ARM 37.109.105) "in new locations" is mentioned twice in the sentence so the "in new locations" at the end of (1)(b) can be deleted. The reference to 50-4-811, MCA is vague.

RESPONSE: The department agrees. The phrase "in new locations" is removed from the end of Rule III(1)(b) (ARM 37.109.105). The department also removed the term "protocols" and the reference to 50-4-811, MCA for clarity. The rule now states



that the department committee will provide the advisory group with a written explanation if it does not follow the advisory group's recommendations.

COMMENT #5: In proposed Rule IV(1)(a) (ARM 37.109.107) delete "to" after "must be" to read "The applicant for: (a) "capital expenditure" must be an existing FQHC."

RESPONSE: The department agrees and has changed the rule accordingly.

COMMENT #6: Proposed Rule IV(3) (ARM 37.109.107) could be combined with (2) as the requirements are the same.

RESPONSE: Changes have been made to re-group application requirements to more accurately reflect the requirements of the various types of applications. However, this was a discussion point with the advisory group who wanted the two subsections to remain.

COMMENT #7: In proposed Rule V(3) (ARM 37.109.109) the department has utilized, as much as possible, the same grant application requirements and format as required by HRSA for new access points, new satellites, medical capacity, and service expansion grants, so there is no need to also include copies of the applications sent to the Secretary of HHS. Instead, the Montana Primary Care Association suggests rewording this section to read that the RFP requirements will closely correspond to the federal grant requirements and format for new access points or satellites, medical capacity, or service expansion grants. The federal application could be utilized "in lieu" of the state's but may cause some problems in utilizing federal forms versus the state modified forms. Section (3) as currently written, requires new access point or new satellite applications to submit not only new access point applications and FQHC look-alike applications, but also service expansion, expanded medical capacity and capital expenditure applications. So at a minimum, this section needs to be reworked so that the type of application is matched to the correct funding category and application process.

RESPONSE: The department agrees and has made the suggested changes.

COMMENT #8: Commentor suggests that in proposed Rule VI (ARM 37.109.111) pertaining to criteria for awarding grants, the department delete "developed by the advisory group and the criteria" because criteria developed by the advisory group are discussed in (2). The default criteria are the HHS criteria which should be given prominence. The commentor also proposed omitting Rule VI(3) (ARM 37.109.111) regarding the advisory group developing weighted criteria.

RESPONSE: The department agrees and has made the suggested change.

COMMENT #9: A commentor proposed the addition of Rule VI(4) (ARM 37.109.111). "(4) In the event that funding is available after the initial award process has been completed, such as in the case that the state-funded grantee receives federal funding for the same purpose, the department shall have the option

of making awards to the next highest rated applicant(s) without requiring a new RFP process." The rules should specifically allow the department to create a list of acceptable grant proposals, and list them in priority order for funding, to create an avenue to fund a second grantee from the list if the first grantee is funded. For example, let us say that Health Care Provider "A" has the top proposal, and gets funded by the state for a new access point. If Health Care Provider "A" should be successful in getting federal funding a few months later, and no longer needs state funds, the department should be able to go back to the list of proposals and simply take number 2 on the list (if that grant proposal was scored at an acceptable level) to award a grant that will use the available state money. If the state needs to go through another whole grant/RFP cycle, you can imagine the time delay, the hassle for communities, and so on. Simply being able to go down the list would be far more efficient and productive.

RESPONSE: The department agrees and has changed the rule accordingly.

COMMENT #10: In Rule VIII (ARM 37.109.115) Review of Proposals by Department Committee. The rules do not currently describe any role of the advisory group in the award process even though HB 406 in section (7), (now 50-4-811, MCA) states:

"Advisory Group -purpose and role. (1) The purpose of the advisory group is to oversee the grant award process developed by the department; and

(2) The advisory group will recommend to the department the projects that it considers appropriate for the funding in accordance with the requirements of sections (4) and (5). The advisory group's recommendations are not binding on the department, but when a recommendation is not followed by the department, the department shall provide the reasons to the advisory group."

It is understood that involvement of the advisory group must be carefully crafted to comply with the Montana Department of Administration evaluation requirements of the RFP process. Some suggested language on the advisory board's role might be:

"The advisory group will have an opportunity to define its role in the evaluation process in accordance with Montana Department of Administration requirements. For example, the advisory group could choose to have the department committee complete the objective review process without its active involvement or the advisory group might determine another mechanism along with evaluation criteria to actively involve board's participation in the final awards determination."

RESPONSE: The department agrees. "The advisory group will have an opportunity to define its role in the evaluation process in accordance with Montana Department of Administration requirements regarding requests for proposals." will be added as Rule VIII(2) (ARM 37.109.115). In addition the title will be changed to "REVIEW OF PROPOSALS BY DEPARTMENT COMMITTEE".

COMMENT #11: In Rule IX(1) (ARM 37.109.117) Award and Administration of

Grant, section (1), revise the current language to allow for the use of a "prioritized list" of applications that would eligible for funding as a component as suggested for Rule VI(5). "(1) Final grant awards determination, along with a prioritized listing, arranged by highest score, of applicants will be made by the department committee. The department committee shall advise the advisory group, in writing, of its determination of grant award(s) to applicant(s) along with the prioritized listing of additional eligible applicants."

RESPONSE: The department agrees. RULE IX(1) (ARM 37.109.117) will be amended so that the first two sentences are removed and the following two sentences are inserted in its place: "(1) Final grant awards determination, along with a prioritized listing, arranged by highest score, of applicants will be made by the department committee. The department committee shall advise the advisory group, in writing, of its determination of grant award(s) to applicant(s) along with the prioritized listing of additional eligible applicants."

COMMENT #12: Concern had been expressed that some of the titles of the documents referenced within this administrative rule proposal may need to be amended due to the issuance of a RFP after the ARM hearing.

RESPONSE: The RFP has been issued and reviewed. Further amendments to the proposed rule are not needed due to issuance of the RFP.

/s/ Geralyn Driscoll  
Rule Reviewer

/s/ Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 28, 2008.